

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DAVID C. DAWSON,

No. C 10-4066 CW (PR)

Plaintiff,

ORDER OF DISMISSAL

v.

CALIFORNIA DEPARTMENT OF CORRECTION
AND REHABILITATION, et al.,

Defendants.

INTRODUCTION

Plaintiff, a state prisoner, has filed a pro se civil rights action pursuant to 42 U.S.C. § 1983 alleging that Defendants have violated his rights to free exercise of religion under the First Amendment and to equal protection under the Fourteenth Amendment.

His motion for leave to proceed in forma pauperis has been granted.

Venue is proper because the events giving rise to the claim are alleged to have occurred at Correctional Training Facility (CTF), which is located in this judicial district. See 28 U.S.C. § 1391(b).

In his complaint, Plaintiff names the following Defendants: CTF Warden R. Grounds, CTF Assistant Warden J. Soares, and California Department of Corrections and Rehabilitation (CDCR) Secretary M. Cates, as well as the CDCR. He seeks injunctive relief, stating: "That to assure Plaintiff's rights to freedom of religion and equal protection of law be upheld by the California Department of Corrections & Rehabilitation being ordered by this Court to allow him participation in the family visiting program forthwith." (Compl. at 3-4.)

DISCUSSION

I. Standard of Review

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. Id. § 1915A(b)(1), (2). Pro se pleadings must be liberally construed. Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1988).

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed by a person acting under the color of state law. West v. Atkins, 487 U.S. 42, 48 (1988).

II. Factual Background

Under California Code of Regulations Title 15 § 3177(b)(2), CTF bans family visits for inmates who are serving life sentences without set parole dates and inmates who are housed in close B custody. (Compl. at 1.) Plaintiff is a close B custody inmate serving a life sentence. He does not have a set parole date. (Id. at 3.) Close B custody is a heightened security status.

Plaintiff is also "of the Christian faith, which commands him to perform specific marital duties such as consummating his marriage." (Id.) However, because of his close B custody status

1 and his life sentence without a set parole date, he is not
2 permitted family visits.

3 On March 7, 2010, Plaintiff filed a 602 inmate appeal alleging
4 the ban on family visits for inmates who are serving life sentences
5 without set parole dates and inmates who are housed in close B
6 custody violates his freedom of religion and his equal protection
7 rights. Defendants Grounds and Soares denied Plaintiff's inmate
8 appeal at the second level of review. Plaintiff alleges Defendants
9 Grounds and Soares "utiliz[ed]" Title 15 § 3177(b)(2) to "deny his
10 inmate appeal." (*Id.* at 2.)

11 Plaintiff submitted his inmate appeal to the Director's level
12 of review because he was dissatisfied with the second level of
13 review response. Defendant Cates denied Plaintiff's inmate appeal
14 at the Director's level of review on the basis that Title 15
15 § 3177(b)(2) "prohibits Plaintiff from participating in the family
16 visiting program due to him not having a parole date and his close
17 B status." (*Id.*)

18 III. Legal Claims

19 A. Free Exercise of Religion

20 In order to establish a free exercise violation, a prisoner
21 must show a defendant burdened the practice of his religion without
22 any justification reasonably related to legitimate penological
23 interests. *See Shakur v. Schriro*, 514 F.3d 878, 883-84 (9th Cir.
24 2008). A prison regulation that impinges on an inmate's First
25 Amendment rights is valid if it is reasonably related to legitimate
26 penological interests. *See O'Lone v. Estate of Shabazz*, 482 U.S.
27 342, 349 (1987) (quoting *Turner v. Safley*, 482 U.S. 78, 89 (1987));
28 *see e.g., McCabe v. Arave*, 827 F.2d 634, 637 (9th Cir. 1987)

1 (prison regulation prohibiting Church Jesus Christ Christian
2 inmates from group worship and group study reasonably related to
3 legitimate penological needs); cf. Mayweathers v. Newland, 258 F.3d
4 930, 937-38 (9th Cir. 2001) (finding that policy of disciplining
5 inmates when they miss a work assignment to attend Jumu'ah
6 (Sabbath) services interfered with conduct mandated by Muslim faith
7 and was not reasonably related to legitimate penological
8 interests).

9 A prisoner is not required to show objectively that a central
10 tenet of his faith is burdened by a prison regulation to raise a
11 viable claim under the Free Exercise Clause. Shakur, 514 F.3d at
12 884-85. Rather, the sincerity test of whether the prisoner's
13 belief is "sincerely held" and "rooted in religious belief"
14 determines whether the Free Exercise Clause applies. Id. The
15 prisoner must show that the religious practice at issue satisfies
16 two criteria: (1) the proffered belief must be sincerely held and
17 (2) the claim must be rooted in religious belief, not in purely
18 secular philosophical concerns. Malik v. Brown, 16 F.3d 330, 333
19 (9th Cir. 1994) (cited with approval in Shakur, 514 F.3d at 884).

20 Plaintiff alleges that Defendants Grounds, Soares, Cates and
21 the CDCR violated his right to the free exercise of religion by not
22 permitting him family visits under California Code of Regulations
23 Title 15, § 3177(b)(2). Plaintiff claims his free exercise of
24 religion right was violated because he and his wife were prevented
25 from "consummating their marriage," which has "placed he and his
26 wife on a path to temptation and sin, and ultimately divorce, which
27 also is in contradiction with his faith." (Id.)

28 The Court assumes without deciding that Plaintiff's beliefs

1 are sincerely held. However, Plaintiff has failed to show that
2 Defendants burdened the practice of his religion without any
3 justification reasonably related to legitimate penological
4 interests. Plaintiff has acknowledged that Defendants acted under
5 the authority of California Code of Regulations Title 15,
6 § 3177(b)(2), which provides that "[f]amily visits shall not be
7 permitted for inmates who are . . . sentenced to life . . . without
8 a parole date established by the Board of Prison Terms" or for
9 inmates who are "designated close A or close B custody." See Cal.
10 Code Regs. tit. 15, § 3177(b)(2).

11 Inmates are housed in close B custody for various reasons,
12 generally because of their crimes, sentence lengths or behavior
13 while in prison. The CDCR has a legitimate penological interest in
14 prohibiting family visits for inmates with a heightened security
15 status. Plaintiff, as a close B custody inmate serving a life
16 sentence without a set parole date, has a heightened security
17 status. Defendants had a legitimate penological interest in
18 prohibiting family visits for Plaintiff. Therefore, Plaintiff has
19 failed to state a cognizable First Amendment free exercise of
20 religion claim against Defendants Grounds, Soares, Cates and the
21 CDCR.

22 To the extent that Plaintiff seeks relief against Defendants
23 Grounds, Soares and Cates for their failure to grant his inmate
24 appeal, this claim must fail. Prisoners have no absolute
25 constitutional right for their grievances to be heard in a prison
26 administrative appeal system. See Mann v. Adams, 855 F.2d 639, 640
27 (9th Cir. 1988); Antonelli v. Sheahan, 81 F.3d 1422, 1430 (7th Cir.
28 1996). California prison regulations governing the grievance

1 process do not give rise to constitutionally protected liberty
2 interests; rather, California prison regulations grant prisoners a
3 purely procedural right and set forth no substantive standards.
4 See Cal. Code Regs. tit. 15, § 3084 (applicable to state prisons);
5 see also Smith v. Noonan, 992 F.2d 987, 989 (9th Cir. 1993); Mann,
6 855 F.2d at 640.

7 Finally, to the extent that Plaintiff sues the CDCR for
8 violating his right to the free exercise of religion, this claim
9 must also fail. The Eleventh Amendment prevents the CDCR, which is
10 a state agency, from being sued in federal court. See Simmons v.
11 Sacramento County Superior Court, 318 F.3d 1156, 1161 (9th Cir.
12 2003) (Eleventh Amendment bars suit against state superior court
13 and its employees); Bennett v. California, 406 F.2d 36, 39 (9th
14 Cir. 1969) (California Adult Authority and California Department of
15 Corrections not persons within meaning of Civil Rights Act); see
16 also Raygor v. Regents of University of Minnesota, 534 U.S. 533,
17 541-42 (2002) (Eleventh Amendment bar includes state law claims
18 brought against a state in federal court under the supplemental
19 jurisdiction statute, 28 U.S.C. § 1367).

20 Accordingly, the Court DISMISSES Plaintiff's free exercise of
21 religion claim against Defendants Grounds, Soares, Cates and the
22 CDCR.

23 B. Equal Protection

24 Plaintiff also alleges Defendants Grounds, Soares, Cates and
25 the CDCR violated Plaintiff's equal protection right by enforcing
26 the ban on family visits for close custody inmates and inmates
27 serving life sentences without set parole dates. "The Equal
28 Protection Clause of the Fourteenth Amendment commands that no

1 State shall 'deny to any person within its jurisdiction the equal
2 protection of the laws,' which is essentially a direction that all
3 persons similarly situated should be treated alike." City of
4 Cleburne v. Cleburne Living Center, 473 U.S. 432, 439 (1985)
5 (quoting Plyler v. Doe, 457 U.S. 202, 216 (1982)). To state a
6 claim for relief under the Equal Protection Clause, a plaintiff
7 must allege that the defendant acted at least in part because of
8 the plaintiff's membership in a protected class. See Serrano v.
9 Francis, 345 F.3d 1071, 1081-82 (9th Cir. 2003). Proof of a
10 discriminatory intent or purpose is also required. City of
11 Cuyahoga Falls, Ohio v. Buckeye Cmty. Hope Found., 538 U.S. 188,
12 194 (2003). In the prison context, an allegedly discriminatory
13 prison regulation or practice is valid as long as it is "reasonably
14 related to legitimate penological interests." Turner v. Safley,
15 482 U.S. 78, 89 (1987).

16 Plaintiff alleges that enforcement of the ban violates his
17 equal protection right because he is "similarly situated to other
18 inmates who receive family visits due to the fact that he and other
19 inmates share the same interests in maintaining family and
20 community connections." (Compl. at 3.) Plaintiff also alleges he
21 is similarly situated to other non-close custody inmates because
22 "he will eventually be released back into the community," and thus
23 "family visiting is even more crucial for life term
24 inmates" (Id.) Plaintiff does not allege that Defendants
25 Grounds, Soares, Cates and the CDCR acted at least in part based on
26 Plaintiff's membership in a protected class -- that is, based on
27 Plaintiff's race or religion. Serrano, 345 F.3d 1081-82. Rather,
28 as Plaintiff acknowledges, Defendants acted based on Plaintiff's

1 status as a close B custody inmate without an established parole
2 date. Further, to the extent that Plaintiff sues the CDCR
3 generally for violating his equal protection right, this claim must
4 fail, as mentioned above, because the Eleventh Amendment prevents
5 the CDCR from being sued in federal court. See Simmons, 318 F.3d
6 at 1161. Plaintiff has failed to state a cognizable equal
7 protection claim against Defendants Grounds, Soares, Cates and the
8 CDCR; therefore, this claim is DISMISSED.

9 Accordingly, Plaintiff's complaint has failed to state a claim
10 upon which relief may be granted. Because amendment would be
11 futile, this action is DISMISSED with prejudice and without leave
12 to amend.

13 CONCLUSION

14 For the foregoing reasons, this action is DISMISSED with
15 prejudice and without leave to amend.

16 The Clerk of the Court shall enter judgment and close the
17 file.

18 IT IS SO ORDERED.

19 DATED: 9/7/2011



CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

DAVID C DAWSON,
Plaintiff,

Case Number: CV10-04066 CW

v.

CERTIFICATE OF SERVICE

CALIFORNIA DEPARTMENT OF
CORRECTIONS et al,
Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on September 7, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

David Clinton Dawson C-87839
Correctional Training Facility-Central
FW-320L
P.O. Box 689
Soledad, CA 93960-0689

Dated: September 7, 2011

Richard W. Wieking, Clerk
By: Nikki Riley, Deputy Clerk